INTERNAL INQUIRY INTO THE ACTIONS OF CANADIAN OFFICIALS IN RELATION TO ABDULLAH ALMALKI, AHMAD ABOU-ELMAATI AND MUAYYED NUREDDIN

SUBMISSIONS ON BEHALF OF AHMAD ABOU EL MAATI CONCERNING THE CONDUCT OF THE INQUIRY

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SUBMISSIONS OF AHMAD EL MAATI CONCERNING THE CONDUCT OF THE COMMISSION OF INQUIRY

A. INTRODUCTION

1. The Government of Canada has established this Commission under Part One of the *Inquiries Act*, R.S.C., C. 1-13 to determine:

> a. whether the detention of Abdullah Almalki, Ahmad Abou-Elmaati and Muayyed Nureddin in Syria or Egypt resulted, directly or indirectly, from actions of Canadian officials, particularly in relation to the sharing of information with foreign countries and, if so, whether those actions were deficient in the circumstances,
>
> b. whether there were deficiencies in the actions taken by Canadian officials to provide consular services to Abdullah Almalki, Ahmad Abou-Elmaati and Muayyed Nureddin while they were detained in Syria or Egypt, and
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> c. whether any mistreatment of Abdullah Almalki, Ahmad Abou-Elmaati and Muayyed Nureddin in Syria or Egypt resulted, directly or indirectly, from actions of Canadian officials, particularly in relation to the sharing of information with foreign countries and, if so, whether those actions were deficient in the circumstances.

2. The terms of reference title the Commission as an "internal inquiry" and provide that the Commissioner is to adopt any procedures and methods that he considers expedient for the proper conduct of the inquiry, "while taking all steps necessary to ensure that the inquiry is conducted in private". The terms of reference further permit the Commissioner to conduct "specific portions of the inquiry in public if he is satisfied that it is essential to ensure the effective conduct of the inquiry".

Terms of Reference, OIC PC 2006-1526, paras. c, d, e

3. The Commissioner has issued as a notice of hearing inviting the participants to make comments on the rules of procedure and to address the conduct of the inquiry. To this end the Commissioner has identified five areas of specific concern:

> 1. What is the meaning of the phrase "any mistreatment" as it appears in paragraph (a)(iii) of the Terms of Reference?
>
> 2. Is it necessary, in order for the Commissioner to determine the matters that paragraph (a) of the Terms of Reference mandate him to determine, for him to decide whether, and the extent to which, Mr. Almalki, Mr. Elmaati and Mr. Nureddin were tortured in Syria and Egypt?
>
> 3. What does paragraph (d) of the Terms of Reference mean in requiring the Commissioner, subject to paragraph (e), to take all steps necessary to ensure that

> the Inquiry is conducted in private? In particular, who should be entitled to attend any hearing conducted in private?
>
> 4. If the Commissioner decides that some participants are not entitled to attend a hearing conducted in private, what if any steps should he take to ensure that those participants can participate appropriately in the Inquiry's process?
>
> 5. What considerations should the Commissioner take into account in determining, in accordance with paragraph (e) of the Terms of Reference, whether he is satisfied that it is essential to ensure the effective conduct of the Inquiry that specific portions of the Inquiry be conducted in public?
>
> *Supplementary Notice of Hearing*, March 27, 2007

4. Mr. El Maati addresses the questions first and then make comments on the rules of procedure.

5. Mr. El Maati agrees with the submissions of Mr. Almalki and Mr. Nureddin in respect of the five questions posed by the Commissioner.

6. Mr. El Maati adopts for the purpose of this hearing, the facts set out in the Chronology prepared on behalf of several intervenors with standing at this inquiry.

Chronology of Public Information Relating to the Cases of Messrs. Almalki, El Maati, and Nureddin, April 11, 2007

B. SUBMISSIONS:

1. What is the meaning of the phrase "any mistreatment" as it appears in paragraph (a)(iii) of the Terms of Reference?

7. Mistreatment is defined as being treated 'wrongly or badly'. Mistreatment must be interpreted to include torture and other forms of cruel, inhuman or degrading treatment, as well as lesser forms of harmful treatment.

Websters English Dictionary, Concise Edition, Geddes & Grosset, 1999, p. 210

8. Not only does conduct resulting in the imposition of physical and /or psychological harm constitute mistreatment, but as well restrictions, such as arbitrary, discriminatory, and indefinite detention constitute mistreatment.

9. In the context of this Commission's mandate, mistreatment should be considered to mean to any treatment which results in a breach of the person's human rights, as set out in international conventions such as the *International Covenant on Civil and Political Rights* and regional conventions such as the *Inter-American Declaration on the Rights and Duties of Man* and as entrenched in Canada's *Charter of Rights and Freedoms.* This would be consistent with the meaning of the word 'mistreatment', as a breach of a human right is always considered to be wrong.

Suresh v MCI, [2002] 1 S.C.R. 3; [2002] S.C.J. No. 3
International Covenant on Civil & Political Rights, CTS 1976/47
UN Working Group on Arbitrary Detention, Fact Sheet No. 26, para. IV. A & B
Universal Declaration Of Human Rights (UDHR), U.N. Doc A/810
American Declaration of the Rights and Duties of Man, (ADRDM), 1948
A (FC) v Secretary of State for the Home Department, [2005] UKHL 71
Charkaoui v M.C.I., [2007] S.C.J. No. 9

10. There are many forms of mistreatment, experienced by Mr. El Maati, which are potentially subject to scrutiny by this Commission. This mistreatment includes his arbitrary and extended detention without charge, the severe torture he experienced, both physical and psychological, and the deplorable conditions under which he was detained. It also must include for example, acts or omissions rooted in discrimination, those which caused and/or maintained separation for an extended period of time from his family; those which caused harm to his reputation and intruded on his privacy and home; and those which had the effect of preventing him from returning to Canada as a Canadian citizen for an extended period of time.

Chronology of Public Information Relating to the Cases of Messrs. Almalki, El Maati, and Nureddin, April 11, 2007, at p. 14, 15, 16, 17, 22, 25-28, 33-35, 40-42
International Covenant on Civil & Political Rights, CTS 1976/47, Art. 7 (torture), Art. 9 (liberty); Art. 10 (humane treatment), Art. 12 (right of entry to one's own country), (Art. 17 (privacy, family. Home, honour and reputation), Art. 18 (freedom of religion), Art. 19 (freedom of expression), Art. 22 (freedom of Association), Art. 23 (family),

Art. 26 (equality)
American Declaration of the Rights and Duties of Man, (ADRDM), 1948, Art. 1 (life, liberty), Art. II (equality), Art. III (freedom of religion), Art. IV, (freedom of expression), Art. V (honour, reputation, privacy, family life), Art. VI (family), Art. VIII (right of entry to one's country), Art. XVIII (right of prompt recourse), Art. XXII (freedom of association), Art. XXIV (right of petition), Art. XXV (arbitrary detention)

2. Is it necessary, in order for the Commissioner to determine the matters that paragraph (a) of the Terms of Reference mandate him to determine, for him to decide whether, and the extent to which, Mr. Almalki, Mr. Elmaati and Mr. Nureddin were tortured in Syria and Egypt?

11. Paragraph 'b' of the Terms of Reference provides that the Commissioner may accept as conclusive, or give weight to, the findings of other examinations that may have been conducted into the actions of Canadian officials in relation to Mr. El Maati, Mr. Almalki, and Mr. Nureddin.

12. In the course of the Commission of Inquiry into the actions of Canadian Officials relating to Maher Arar (the 'Arar Commission'), Justice O'Connor directed Professor Stephen Toope to examine the three men with a view to determining the nature of the treatment they received while detained in Syria and to draw conclusions as to the credibility of their accounts in relation to drawing conclusions about the credibility of Maher Arar's account of mistreatment while detained in Syria. Professor Toope issued a report on which concluded that the accounts given by the men of their mistreatment, including torture in Syria, was credible and consistent with general human rights reports on Syria. Justice O'Connor accepted the Toope report. Paragraph b of the terms of reference is broad enough in its wording to permit the Commissioner to accept this report in lieu of repeating the process with another fact finder.

Commission of Inquiry Into the Actions of Canadian Officials in Relation to Maher Arar, Toope Report, www.ararcommission.ca/eng/ToopeReport_final.pdf
Report of the Events Relating to Maher Arar: Analysis and Recommendations, (2006) at p. 297

13. Mr. El Maati requests that the Commissioner adopt the Toope report with respect to the treatment he experienced while detained in Syria. Having said this, it is apparent from the

Toope report that the focus of Professor Toope's investigation was Maher Arar. If the question of whether Mr. El Maati was tortured remains an issue before this Commission at the insistence of government officials, then Mr. El Maati seeks the appointment of a fact finder with the same mandate as that given to Professor Toope by Justice O'Connor. This would permit, only if necessary, a further and more focussed assessment of Mr. El Maati's treatment.

14. There has been no examination of how Mr. El Maati was treated in Egypt. He was tortured severely, much more so than his torture in Syria. He would propose that the Commissioner appoint a fact finder, with the same mandate as that given to Professor Toope by Justice O'Connor, to meet with him, to examine his account of mistreatment, to review the human rights reports about abuses in Egypt, and provide a report similar in nature to that prepared by Professor Toope.

15. It is counsel's understanding that this method was adopted by Justice O'Connor because of the nature of the evidence to be provided. It is far more respectful of Mr. El Maati's dignity to permit him to discuss his mistreatment in a private setting rather than recounting what happened in a public forum. Being required to speak of it in a public forum would increase the trauma involved in recounting such events. He has had to have a number of operations as a result of the torture he experienced. It was severe and he ought not be forced to speak of it in detail in public, nor for the purposes of this Commission, should he be subjected to cross examination. It would be sufficient for him to be examined carefully by a fact finder in private.

3. What does paragraph (d) of the Terms of Reference mean in requiring the Commissioner, subject to paragraph (e), to take all steps necessary to ensure that the Inquiry is conducted in private? In particular, who should be entitled to attend any hearing conducted in private?

16. The terms of reference for this Commission are problematic to the extent that the Commissioner is required to take all steps necessary to ensure that the inquiry is conducted

in private. This is because the enabling legislation under which this Commission was created contemplates 'public' inquiries to investigate matters of public importance and because constitutional norms require open proceedings in respect of matters of public concern.

17. The *Inquiries Act* does not contemplate 'private' or 'internal' proceedings, other than departmental investigations. The Act allows for two separate categories of inquiry. The first, pursuant Part One, s. 2 is a public inquiry established by the Governor in Council to inquire "into and concerning any matter connected with the good government of Canada or the conduct of any part of the public business thereof". Part Two of the Act is concerned with a departmental investigation established by the relevant minister. Clearly this Commission is not a departmental investigation. Not only do the terms of reference indicate that the Commission is pursuant to Part One of the *Inquiries Act*, the preamble to the terms of reference refers to several departments as being committed to full cooperation with the review process.
Terms of Reference, Preamble.

18. While s. 2 to 5 of Part One of the *Inquiries Act* does not specifically state that a commission of inquiry will be held in public, it is apparent from the title to Part 1 - Public Inquiries - and from s. 2 which speaks of the 'public business', that it is meant to be public. This differs significantly from Part 2 which makes no reference to a public process. It is recognized that Justice O'Connor concluded that there was no prohibition against a 'private' commission created under the public inquiry division of the Act. However, it is noted that Justice O'Connor cited no authority for this.

Inquiries Act, Part 1, s. 2; Part 2, s. 6
Commission of Inquiry Into the Actions of Canadian Officials in Relation to Maher Arar, Factual Background, Vol. II, p. 586-587

19. It is apparent from judicial comment on such inquiries that the norm is to conduct them in public and only close them where this may be necessary for valid reasons, such as national security and defence interests. In *Phillips v Nova Scotia (Commission of Inquiry into the West Ray Mine Tragedy*, Justice Cory stated:

> 62 One of the primary functions of public inquiries is fact-finding. They are often convened, in the wake of public shock, horror, disillusionment, or scepticism, in order to uncover "the truth". .... these inquiries can and do fulfil an important function in Canadian society. In times of public questioning, stress and concern they provide the means for Canadians to be apprised of the conditions pertaining to a worrisome community problem and to be a part of the recommendations that are aimed at resolving the problem. Both the status and high public respect for the commissioner and the open and public nature of the hearing help to restore public confidence not only in the institution or situation investigated but also in the process of government as a whole. They are an excellent means of informing and educating concerned members of the public.
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> *Phillips v Nova Scotia (Commission of Inquiry into the West Ray Mine Tragedy*, [1995] S.C.J. No. 36, at para. 62
> *Canada A.G. v Commission of Inquiry into the Blood System in Canada - Krever Commission*, [1997] S.C.J. No. 83, at para. 30

20. As noted above by Justice Cory, there are normally compelling public concerns which underlie commissions of inquiry. The public concerns here are equally compelling, given that they relate to the conduct and actions of Canadian officials which may have led to or contributed to the detention and torture of Canadian citizens. The public interest is self evident - the three Canadians who were tortured need to know what role their government played in what happened to them. The Canadian public at large not only needs to know, but should know, what happened.

21. This is consistent with the principle of openness in respect of legal proceedings of public concern. The Supreme Court of Canada recognized this principle in a number of judgements. In *Vancouver Sun Re*, Justices Arbour and Iacobucci stated:

> 23 This Court has emphasized on many occasions that the "open court principle" is a hallmark of a democratic society and applies to all judicial proceedings: *Attorney General of Nova Scotia v. MacIntyre*, [1982] 1 S.C.R. 175, at p. 187; *Canadian Broadcasting Corp. v. New Brunswick (Attorney General)*, [1996] 3 S.C.R. 480, at paras. 21-22; *Edmonton Journal v. Alberta (Attorney General)*, [1989] 2 S.C.R. 1326. "Indeed a democracy cannot exist without that freedom to express new ideas and to put forward opinions about the functioning of public institutions. The concept of free and uninhibited speech permeates all truly [page346] democratic societies and institutions. The vital importance of the concept cannot be over-emphasized": *Edmonton Journal, supra*, at p. 1336.
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> 24 The open court principle has long been recognized as a cornerstone of the common law: *Canadian Broadcasting Corp. v. New Brunswick (Attorney General),*

supra, at para. 21. The right of public access to the courts is "one of principle ... turning, not on convenience, but on necessity": *Scott v. Scott*, [1913] A.C. 417 (H.L.), *per* Viscount Haldane L.C., at p. 438. "Justice is not a cloistered virtue": *Ambard v. Attorney-General for Trinidad and Tobago*, [1936] A.C. 322 (P.C.), *per* Lord Atkin, at p. 335. "Publicity is the very soul of justice. It is the keenest spur to exertion, and the surest of all guards against improbity": J. H. Burton, ed., *Benthamiana: Or, Select Extracts from the Works of Jeremy Bentham* (1843), p. 115.
Vancouver Sun (Re) [2004] 2 S.C.R. 332, at para. 23-24
Dagenais v. C.B.C [1994] 3 S.C.R. 835, at para. 71-72
R. v. Mentuck [2001] 3 S.C.R. 442

22. Justices Arbour and Iacobucci further concluded that, even where legislation permitted closure, there was no notion of 'presumptively secret hearings'. The Court was addressing a judicial investigative hearing, stating in this context:

39 One such guarantee is a presumption of openness, which should only be displaced upon proper consideration of the competing interests at every stage of the process. In that spirit, the existence of an order made under s. 83.28, and as much of its subject-matter as possible should be made public unless, under the balancing exercise of the *Dagenais*/*Mentuck* test, secrecy becomes necessary. Similarly, once a search warrant has been executed and something has been found, the necessity for secrecy has abated and continued limits on public accessibility should only be "undertaken with the greatest reluctance": *MacIntyre, supra*, at p. 189.
Vancouver Sun (Re) [2004] 2 S.C.R. 332, at para. 39-40

23. While a Commissioner presiding over a commission of inquiry is not a 'court' in the traditional sense, principles of openness and fairness apply. Justice McLachlin, as she then was, in *Dagenais* stated in the context of balancing under s. 1 of the *Charter:* "fair trials and open discussion tend to go hand in hand." The Court in the *Krever Commission* judgement stated:

55… It is true that the findings of a commissioner cannot result in either penal or civil consequences for a witness. Further, every witness enjoys the protection of the Canada Evidence Act and the Charter which ensures that the evidence given cannot be used in other proceedings against the witness. Nonetheless, procedural fairness is essential for the findings of commissions may damage the reputation of a witness. For most, a good reputation is their most highly prized attribute. It follows that it is essential that procedural fairness be demonstrated in the hearings of the commission.
Canada A.G. v Commission of Inquiry into the Blood System in Canada - Krever Commission, [1997] S.C.J. No. 83, at para. 30
A.G. Nova Scotia v MacIntyre, [1982] 1 S.C.R. 175, at 183-186

Pacific Press, [1991] F.C.J. No. 313 (C.A.)at para. 27-34
Cardinal v Director of Kent Institution, [1985] 2 S.C.R. 643, at para. 14

24. While undoubtedly, the reputations of some Canadian officials may be at issue in this Commission, the reputations of the three men who were detained abroad are clearly at stake given the allegations of association, if not involvement, with terrorism that have floated in the public for a number of years and were referenced during the course of the Arar Commission.

25. Notwithstanding the direction to take all steps necessary to ensure that the inquiry is conducted in private, both the *Inquiries Act* and the constitutional principle of openness require that the Commission conduct as much of its business as possible in public. The Terms of Reference likewise, while indicating that the Commission is an internal one, emphasize the need for an independent and credible process which ultimately must inspire public confidence. Public confidence can only be maintained through transparency and openness. As noted above in *Phillips*, both respect for the Commissioner and "the open and public nature of the hearing help to restore public confidence not only in the institution or situation investigated but also in the process of government as a whole." This is essential in this case given that the focus is on the actions of Canadian officials and the role they may have played in the mistreatment, including torture, of three Canadian citizens.
Phillips v Nova Scotia (Commission of Inquiry into the West Ray Mine Tragedy, [1995] S.C.J. No. 36, at para. 62

26. Based on the reasoning above, it is submitted that the Commission should be conducted in public and only in private where there are valid national security claims (NSC's) or other such claims made which require that evidence not be publicly disclosed or witnesses not be publicly examined. The Commissioner is authorized by paragraph 'e' to conduct specific portions of the inquiry in public where it is essential to ensure the effective conduct of the inquiry. It is evident, based on Canadian jurisprudence, that openness is essential for the effective conduct of an inquiry. An inquiry cannot be effective without public confidence.

Davidson v Slaight Communications, [1989] S.C.J. No. 45

27. In the alternative, it is Mr. El Maati's position that if the Commissioner is of the view that absent a valid NSC or other such claim, hearings may nevertheless be conducted in private, this does not mean that these particular sittings require the exclusion of the non-state participants. 'Private' or 'internal' does not connote secrecy such that some interested parties are to be excluded. 'Private' merely means that the proceeding is not open to the public. 'Internal' essentially connotes the same meaning. Mr. El Maati, as a participant, should be permitted to fully participate in the private part of the proceedings.

Websters English Dictionary, Concise Edition, Geddes & Grosset, 1999, p. 173, 256
Blacks Law Dictionary, Rev. 9th Ed., p. 952, 1358

28. Mr. El Maati's participation in private sittings is essential. The purpose of open hearings is, in part, to address the accountability of Canadian officials. Mr. El Maati, as the victim of severe torture, is one of the three Canadians who have the greatest claim to calling the government to account for what happened. His exclusion from participation, in the absence of a valid NSC or other claim is not justifiable on any basis, both morally and in law.

4. If the Commissioner decides that some participants are not entitled to attend a hearing conducted in private, what if any steps should he take to ensure that those participants can participate appropriately in the Inquiry's process?

29. The fourth question posed by the Commissioner presents a problem for Mr. El Maati. As he can see no justifiable reason for excluding any participant from the private hearings, in the absence of an NSC or other valid claim, he cannot take a position that addresses limited participation.

30. It would no doubt be more expedient for the Commission to just conduct most of its business in secret in order to avoid having to assess the validity of NSC's or other such claims. This can be a time consuming and frustrating experience, particularly in light of Justice

O'Connor's concerns about the government 'over claiming' in its NSC's despite its stated commitment to maximize public disclosure. One would hope that the government would lived up to its stated intention in the Terms of Reference to fully cooperate with this Commission and would therefore maximize disclosure. However, even if there may be debates about the validity of an NSC, this is not a reason to hold hearings in private just to avoid this debate. Expediency cannot be at the expense of fairness. Whatever evidence or information which may be disclosed, must be disclosed by this Commission.

Commission of Inquiry Into the Actions of Canadian Officials in Relation to Maher Arar, Analysis, p. 302

31. If the Commission is to equate 'private' with 'secret', even without a valid NSC, then Mr. El Maati joins with Mr. Nureddin and Mr. Almalki in submitting that the Air India model is the most appropriate one for the Commission to adopt. This model is the one that provides the greatest degree of fairness for the three men.

Charkaoui v M.C.I., [2007] S.C.J. No. 9, at para. 78
Code, Michael, "The Role of the Independent Lawyer and Security Certificates", *Criminal Law Quarterly*, Vol. 52, No. 1 (Nov. 2006), at p. 107

32. It is important to note the concerns of the Supreme Court of Canada in respect of secret proceedings. While the security certificate process addressed by the Court in *Charkaoui* differed greatly from this Commission's process[1], there are elements of principle in the Court's reasoning which are of broad application. A significant concern for the Court was fairness. The Court was concerned that exclusion of the person concerned from participation in the secret part of the hearing not only restricted his ability to test the evidence against him and to answer the allegations, but limited the ability of the designated judges in those cases to reach a fair decision in the absence of the affected parties. The Court stated:

[1] One of the principle differences is that the security certificate subjects ultimately faced the prospect of a return to torture on the basis of a suspicion of association or involvement with terrorism. However, Mr. El Maati, Mr. Almalki and Mr. Nureddin have already been tortured on a suspicion of association or involvement with terrorism. They have a clear interest in both protecting their reputations and finding out if Canadian officials were in any way responsible for what they suffered.

> 63. The fairness of the *IRPA* procedure rests entirely on the shoulders of the designated judge. Those shoulders cannot by themselves bear the heavy burden of assuring, in fact and appearance, that the decision on the reasonableness of the certificate is impartial, is based on a full view of the facts and law, and reflects the named person's knowledge of the case to meet. The judge, working under the constraints imposed by the *IRPA*, simply cannot fill the vacuum left by the removal of the traditional guarantees of a fair hearing. The judge sees only what the ministers put before him or her. The judge, knowing nothing else about the case, is not in a position to identify errors, find omissions or assess the credibility and truthfulness of the information in the way the named person would be. Although the judge may ask questions of the named person when the hearing is reopened, the judge is prevented from asking questions that might disclose the protected information. Likewise, since the named person does not know what has been put against him or her, he or she does not know what the designated judge needs to hear. If the judge cannot provide the named person with a summary of the information that is sufficient to enable the person to know the case to meet, then the judge cannot be satisfied that the information before him or her is sufficient or reliable. Despite the judge's best efforts to question the government's witnesses and scrutinize the documentary evidence, he or she is placed in the situation of asking questions and ultimately deciding the issues on the basis of incomplete and potentially unreliable information.
> *Charkaoui v M.C.I.*, [2007] S.C.J. No. 9, at para. 63

33. It is recognized that there are Commission counsel assisting the Commissioner, which was not the case in the security certificate proceedings. However, Commission counsel are not an adequate substitute for the person's own counsel. They do not represent the person and have no obligation to advance the person's interests. Mr. El Maati has a clear, compelling and direct interest in the outcome of this Commission. He requests that his counsel be present in any secret hearing.

34. In addition to the presence of counsel in private or secret hearings, on undertakings not to disclose, there must be means available to ensure that the public is aware of what occurs when it is not present. With evidence which is not subject to an NSC or other such claim, this should be fully disclosed, if not during the inquiry, which is of course preferable, then at least by the end of it. With evidence which is subject to an NSC claim, more limited disclosure may still be accomplished through measures such as those adopted by the Security Intelligence Review Committee - expurgated transcripts of evidence given *in camera*, summaries of evidence given *in camera*, and disclosure of redacted documents.

5. What considerations should the Commissioner take into account in determining, in accordance with paragraph (e) of the Terms of Reference, whether he is satisfied that it is essential to ensure the effective conduct of the Inquiry that specific portions of the Inquiry be conducted in public?

35. As noted above, Mr. El Maati submits that, absent a valid NSC or other such claim, the inquiry should be conducted in public. This is the only effective means of ensuring public confidence in the process.

36. To the extent that the Commissioner determines that the hearing may be conducted in private or in secret, it remains essential that some areas of concern be addressed in public. These have been articulated by Mr. Almalki in his submissions to this Commission: a) Conduct of Embassy and Consulate Officials, b) Canada's practice and policy on torture, and c) information sharing by Canadian officials with foreign states. These areas are of particular importance to Canadians, particularly those who travel outside of Canada. Mr, El Maati suggests that a further area of concern which should be addressed in public is the role played by Canadian officials in extending the detention of the Mr. El Maati. Complicity in continuing the detention of Mr. El Maati, and Mr. Almalki as well, does not arise only from information sharing by Canadian officials with foreign states, it appears that it may also have arisen because of requests by Canadian officials to secure information from these men while they were detained.

Chronology of Public Information Relating to the Cases of Messrs. Almalki, El Maati, and Nureddin, April 11, 2007, at p. 40-42

37. The importance of public accountability in matters concerning the torture of Canadian citizens cannot be overstated. Torture occurs in private. Those directly engaged in it and those who may indirectly contribute to it do not act in public. Accountability cannot be meaningful unless the actions of those Canadian officials which may have contributed to the torture of Mr. El Maati come under public scrutiny.

A (F.C.) V Sec. of State for the Home Department, [2005] UKHL 71, para.11-13,30-53,64-69

6. Comments on the Rules of Procedure.

38. Mr. El Maati adopts the submissions made by counsel for Mr. Almalki in respect of the Rules of Procedure and Practice. Given the limited time available to him to have these rules reviewed carefully, he may have additional comments on them in reply submissions or at the scheduled hearing.

ALL OF WHICH IS submitted at Toronto, this 11th day of April, 2007.

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HADAYT NAZAMI

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BARBARA JACKMAN